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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942

Nos. 642 and 643

IN THE MATTER OF 4145 BROADWAY HOTEL COMPANY, A CORPORATION,

DEBTOR.

(C. C. A. case No. 7888)

F. GERALD THOMAS,

petitioner,

vs.

THE UNITED STATES OF AMERICA,

respondent.

(C. C. A. case No. 7891)

F. GERALD THOMAS,

petitioner,

vs.

GEORGE W. ROSSETTER, JAY C. McCORD AND MAURICE A. ROSENTHAL, STOCK TRUSTEES,

respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI.

BERNARD NATH,
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respondents.



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Summary of Argument.

The injunction order entered by the district court May 26, 1938—for the violation of which the petitioner has been adjudged in contempt of court—was affirmed by the circuit court of appeals October 25, 1938, rehearing denied December 14, 1938 (100 F. 2d 7), therefore the injunction order itself is no longer open to review.

February 14, 1939 the petitioner filed in the district court a petition to vacate or terminate the injunction, on the ground that the injunction had fully served its purpose and had therefore become a nullity. This petition was denied March 20, 1939, whereupon petitioner applied to the circuit court of appeals for leave to appeal from said order. On April 27, 1939 the circuit court of appeals filed a memorandum opinion denying leave to appeal. This memorandum opinion has recently been published (130 F. 2d 487).

The question whether the injunction was still in full force and effect again arose in 1940, in connection with a petition filed in the district court by the respondents, as stock trustees of 4145 Broadway Hotel Company, praying for the instructions of the court with

respect to a proposed mortgage loan by which to clear up tax arrearages and to rehabilitate the property of the corporation. The district court entered a decree August 6, 1940 holding void certain powers of attorney obtained by Thomas from certificate holders in violation of the injunction. This decree was affirmed by the circuit court of appeals (117 F. 2d 639) and thereupon a petition for certiorari was filed in this court to review the judgment of the circuit court of appeals. The petitioner contended that the injunction order of May 26, 1938 had expired automatically at the midnight hour of June 22, 1938, therefore the court had improperly refused to recognize validity of powers of attorneys obtained in defiance of the injunction. The petition for certiorari was denied June 2, 1941 (case No. 1041, October term 1940).

On the present appeal to the circuit court of appeals, the petitioner raised no question regarding his guilt or punishment. His designation of record on appeal did not include the evidence heard by the district judge. He limited his appeal solely to the question of the jurisdiction of the district court. He contends here, first, that the injunction order should never have been entered, which contention comes four years too late; second, that the injunction expired June 22, 1938, a contention now three times rejected by the circuit court of appeals.

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STATEMENT OF THE CASE.

We refer the court to the petition and answer in case No. 1041, October term 1940, wherein a petition for writ of

certiorari was filed by F. Gerald Thomas (and Ralph C. Golding) and denied by this court on June 2, 1941. The petitioners in said case No. 1041 sought review of the judgment rendered in the same case by the circuit court of appeals on February 11, 1941 (117 F. 2d 639; certiorari denied 313 U. S. 593).

One of the points adjudicated by the circuit court of appeals, in its decision of February 11, 1941, was that the injunction order entered by the district court May 26, 1938 was still in full force and effect. It appeared that the petitioner had flagrantly and persistently disregarded the injunction order ever since it was entered, but although in the former proceeding no personal punishment was meted out to the petitioner for his disobedience of the injunction he was denied the fruits of his disobedience, namely, use of the powers of attorney obtained in defiance of the injunction from various holders of voting trust certificates of 4145 Broadway Hotel Company.

Despite the ruling by the circuit court of appeals on February 11, 1941 that the injunction was still in force, Thomas brazenly continued to flaunt the injunction; in particular, by sending to the certificate holders further vicious diatribes against the voting trustees (and incidentally against the district judge and the judges of the circuit court of appeals). (District court findings of fact Nos. 16, 17, 18, 19, 20 and 21, R. 22-24.)

On a petition filed by the respondents April 18, 1941 charging Thomas with contempt of court (because of his further violations of the injunction order after February 11, 1941, when the circuit court of appeals rendered its former decision), the district court adjudicated that Thomas was guilty and should be punished by commitment to jail for 90 days. On the appeal from this order to the circuit court of appeals, petitioner chose not to include in the record on appeal the evidence heard by the district court on the petition to punish him for contempt. He lim-

ited his argument on the appeal solely to the question of jurisdiction; submitted nothing to the reviewing court in challenge of the justice of the order appealed from, or the fairness of the punishment imposed upon him for his contemptuous conduct.

The question of jurisdiction, so elaborately presented in the petition for certiorari, when shorn of irrelevancies (and mud-slinging innuendoes), comes down to two alternative propositions: either (1) that all jurisdiction of the district court in bankruptcy case No. 56875 ended March 7, 1935, when the plan of reorganization of the debtor corporation was confirmed, therefore the court had no jurisdiction to enter the injunction order of May 26, 1938; or (2) that even though the court had jurisdiction to enter the injunction order, the injunction somehow lost its last vestige of vitality at the midnight hour of June 22, 1938, therefore could be disregarded by petitioner at any time thereafter.

Former adjudications.

The injunction order was entered in district court case No. 56875 on May 26, 1938. Although the petitioner now contends that the injunction lost all efficacy June 22, 1938, he made a motion to modify the injunction order on June 23, 1938, which motion was denied. (R. 18, ¶ 5.) Thereafter he prosecuted an appeal from the injunction order to the circuit court of appeals and on October 25, 1938, the appellate court affirmed the injunction order. (100 F. 2d 7; rehearing denied December 14, 1938.)

On February 14, 1939 Thomas filed a petition in the district court to vacate or terminate the injunction order. On hearing of said petition and the answer filed by the respondents, the petition was denied. (R. 37—March 20, 1939.) Thomas then filed a petition in the circuit court of appeals for leave to appeal from said order of the district court and on April 27, 1939 the appellate court filed a memorandum opinion denying leave to appeal. (130 F. 2d 487.)

At no time since April 27, 1939 has the petitioner seen fit to request the district court to dissolve or modify the injunction order of May 26, 1938.

The question of the validity and continued effectiveness of the injunction order arose again in the district court in the proceedings already brought to the attention of this court in petitioner's former application for a writ of certiorari. (Case No. 1041, October term 1940.) The district court decreed on August 6, 1940 that the injunction order was still in full force and effect; the circuit court of appeals affirmed said decree of August 6, 1940 by its decision of February 11, 1941 (117 F. 2d 639). The petition for a writ of certiorari to review said former judgment of the circuit court of appeals was based on precisely the same jurisdictional grounds now urged by the petitioner, but this court declined to review the judgment. (See district court findings of fact Nos. 8-14, R. 18-21.)

No reason for allowance of certiorari.

The circuit court of appeals said: "Appellant has cautiously and, we think, prudently refrained from presenting any argument in defense of or in extenuation of the punishment imposed by the district court." (R. 69.)* Since appellant raises no question regarding his guilt, but only the question whether the district court had jurisdiction to punish him for his violations of the injunction order, it is apparent that the present application for certiorari presents no question not already presented in petitioner's former application for certiorari (case No. 1041).

This case involves no question of general interest regarding the nature and extent of the jurisdiction of a court of bankruptcy in a reorganization proceeding after the plan of reorganization has been approved. The supplementary proceedings in district court case No. 56875 in the

* The record on appeal did not include the evidence. (Appellant's designation of contents of record—R. 50.)

forepart of 1938, which resulted among other things in the entry of the injunction order of May 26, 1938, were initiated by Thomas himself by a series of petitions seeking a general review of all the prior proceedings in the case. (Findings of fact Nos. 2-4, R. 16-17; also docket entries—R. 34-35.)

The plan of reorganization approved by the district court March 7, 1935 made no provision for disposition of unpaid real estate taxes on the property of the debtor corporation for the years 1927-1934 aggregating over $100,000 in principal amount and accruing interest at the statutory rate of 1% per month. At that time it was impossible to raise any money to pay the defaulted taxes. Under the conditions then prevailing, the best that the court and the parties could do was to turn over the property to the reorganized corporation and let the stock trustees try in the future to solve the problem of the unpaid taxes. Fortunately, the corporation was able to meet current taxes during the years 1935-1939 and meanwhile the officers of Cook County, Illinois took no action to foreclose the property for nonpayment of the 1927-1934 tax arrearages. Not until 1940 did it become possible for the reorganized corporation to obtain a mortgage loan, conditioned upon payment of the old taxes and general rehabilitation of the property. As contemplated by the reorganization plan and voting trust agreement (petition, pp. 24 and 26), the stock trustees sought the instructions of the court with respect to the proposed mortgage. The court approved the plan of the trustees to borrow $110,000 on a first mortgage loan, approximately $85,000 to be used to compromise and dispose of the 1927-1934 tax arrearages (at savings of over $125,000) and approximately $25,000 to be used to rehabilitate the property.

Except for this single instance in 1940, when the stock trustees presented to the district court the mortgage and tax settlement program approved by the decree of August

6, 1940 (affirmed 117 F. 2d 639), the jurisdiction exercised in bankruptcy case No. 56875 since 1935 all traces back to the initiative of F. Gerald Thomas.

The petitioner urges that a final decree closing bankruptcy case No. 56875 is long overdue. The circuit court of appeals said: "We need not inquire as to the reason for this long delay in the filing of a final decree. If such inquiry were pertinent, however, the persistent activities of appellant, no doubt, afford a partial reason." (R. 70.) The views of the circuit court of appeals for the seventh circuit regarding the proper scope of jurisdiction in a reorganization proceeding, after approval of a plan of reorganization, have been fully and clearly stated in a series of recent decisions and no obscurity in the law arises from the decision of the circuit court of appeals in the present case. (See cases cited—R. 70.)

Conclusion.

The petition for certiorari is replete with misleading statements, many of them outside the record, also aspersions upon the integrity of all parties to the reorganization proceedings, the district judge and the circuit court of appeals. We see no reason to burden the court with detailed rejoinder to petitioner's misstatements and false insinuations, since it seems clear that the petition for certiorari shows no adequate justification for a review by this court of the judgment rendered by the circuit court of appeals.

Respectfully submitted,

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